Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
BellSouth Corporation's Petition for Waiver	)	**WC Docket No. 05-277**
	)	

SPRINT NEXTEL CORPORATION'S
OPPOSITION TO PETITION FOR WAIVER

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October 18, 2005

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I. Introduction and Summary

BellSouth Corporation ("BellSouth") is asking the Commission to waive a broad set of long-standing regulations applicable to BellSouth's provision of in-region long distance services.[1] Sprint Nextel Corporation[2] – on behalf of its incumbent local exchange, competitive local exchange ("CLEC")/long distance, and wireless operations (together, "Sprint") – opposes BellSouth's Petition.

BellSouth seeks exemption from sections 61.32, 61.33, 61.38, 61.58, and 61.59 of the rules and other aspects of the regulations that impose an obligation to file tariffs for its provision of in-region long distance services.[3] BellSouth also seeks exemption from the price cap rules (sections 61.41-61.49),[4] ostensibly to the extent those rules relate to

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1 Petition for Waiver (filed Sept. 19, 2005) ("Petition"). See Public Notice DA 05-2529 (rel. Sept. 27, 2005).

2 Sprint Nextel Corporation was formerly known as Sprint Corporation.

3 47 C.F.R. §§ 61.32, 61.33, 61.38, 61.58, and 61.59. BellSouth also wants the Commission to waive "any ancillary Commission rules" that require filing of tariffs, such as 47 C.F.R. §§ 61.13-61.17. Petition at 9 n.17.

4 47 C.F.R. §§ 61.41-61.49.

long distance offerings. BellSouth also seeks exemption from the accounting requirements adopted in the Commission's Joint Cost Order[5] and the Accounting Safeguards Order[6] to the degree they require "non-regulated treatment" of in-region interexchange services or in-region long distance services if BellSouth chooses to provide long distance on a more integrated basis after possible sunset of section 272 structural separation requirements. BellSouth predicts that the Commission will allow section 272's separate affiliate requirements to sunset in BellSouth states on December 19, 2005, and so it asks the Commission to grant its requests before then.[7]

The Petition should be denied. The Petition's claims and assumptions are faulty. It fails to meet the standards for waiver, and it fails to show that such extraordinary exemptions from market-protecting regulations are warranted or in the public interest. Further, the Commission should not be entertaining a waiver request and making policy on a piecemeal basis when, as BellSouth acknowledges (Petition at 3), an on-point rulemaking proceeding is already pending, and while other related and important rulemakings remain unaddressed.

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5 Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, Report and Order, 2 FCC Rcd 1298 (1987) ("Joint Cost Order").

6 Implementation of the Telecommunications Act of 1996: Accounting Safeguards under the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 17539 (1996) ("Accounting Safeguards Order").

7 Sprint was among the many carriers, consumer advocates, and state commissions that recognized the importance of extending section 272 requirements past the sunset dates, because of the need to guard against discrimination and cross-subsidization by BOCs beyond the minimum three-year statutory period. See, e.g., Comments of Sprint Corporation, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112 (filed June 30, 2003); Reply Comments of Sprint Corporation (filed July 28, 2003); Comments of Sprint Corporation (filed Aug. 5, 2002); Reply Comments of Sprint Corporation (filed Aug. 26, 2002).

II. The Petition Fails to Meet the Standards for Waiver.

The Commission has authority to waive its rules if there is "good cause" to do so.[8] Its discretion is by no means unlimited, however. An "agency may not act out of unbridled discretion or whim in granting waivers any more than in any other aspect of its regulatory function."[9] It may waive a rule only where "special circumstances warrant a deviation from the general rule *and* such deviation will serve the public interest."[10] The Commission must be able to "explain why deviation better serves the public interest, and it must articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation."[11] BellSouth's Petition does not provide sufficient grounds for the Commission to waive the rules.

A. BellSouth has not shown that its circumstances are genuinely unique.

Waivers are not to be routine, and they cannot be properly granted where "[t]he record reveals nothing unique about [the applicant's] situation."[12] Contrary to the Petition's claims, BellSouth's situation is not unique.

BellSouth is not the only ILEC subject to the types of requirements for which it seeks exemption. Obviously, BellSouth is one of four Bell Operating Companies ("BOCs") that are subject to the very same rules, and the notion that BellSouth is unique, simply because it is smaller than Verizon and SBC (Petition at 6, 24), is wholly mistaken.

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8 47 C.F.R. § 1.3.

9 WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

10 Northeast Cellular v. FCC, 897 F. 2d 1164, 1166 (D.C. Cir. 1990) (emphasis added).

11 Id. See also Industrial Broadcasting Co. v. FCC, 437 F.2d 680 (D.C. Cir. 1970).

12 NE Cellular, 897 F.2d at 1166.

Beyond that, BellSouth is wrong to imply that a separation between local and long distance operations is a restriction only applicable to BOCs. Petition at 3 n.5.

Independent ILECs have long been subject to many of the same requirements from which BellSouth now seeks exemption, including tariffing, separate affiliate requirements, and separate books of account for the provision of long distance services, notwithstanding the proliferation of calling plans and bundled offerings.[13] All ILECs, no matter how small, must adhere to these requirements if they want to be nondominant. This is despite the fact that -- due to their limited size, the limited scope of their service areas, and the dispersion of their service areas -- independent ILECs do not have the ability of a BOC to adversely impact interstate and international services.[14] For example, Sprint's ILEC service territories are widely dispersed and chiefly rural, with their 7.5

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[13] The Commission's rules allow independents' long distance affiliates to share personnel and offices, and to utilize their exchange companies' marketing and other services. E.g., 47 C.F.R. § 64.1903(b). Even with these allowances, however, the separate affiliate requirement realistically is a significantly greater economic burden for any independent than the BOC regulations of which BellSouth's Petition complains. The Commission already relieved the BOCs from the prohibition of structurally separate operations, installation, and maintenance functions. Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates, Report and Order, 19 FCC Rcd 5102 (2004). Independent LECs can avoid the separate affiliate requirement only by means of switchless resale. See 47 C.F.R. § 64.1903(b)(1). Even they, however, must maintain separate books of account.

[14] The probability of this is demonstrated by the fact that the four BOCs control approximately 86% of the nation's ILEC-owned switched access lines, while the approximately 1,300 independent ILECs account for only the remaining 14%. See High Cost Loop Support Projected by State by Study Area, Universal Service Administrative Company, Mar. 31, 2003. Additionally, one of the four BOCs is the dominant ILEC in 97 of the top 100 MSAs in the United States. The remaining three are split, one each, by Sprint (Las Vegas), Cincinnati Bell (Cincinnati), and Rochester Telephone (Rochester). In addition, the average number of large businesses served by the BOCs in the top 100 MSAs was 6,523 in 2003, a figure that surely has risen as the BOCs continued to expand their penetration into the enterprise market after receiving in-region long distance authority under section 271.

million access lines scattered among eighteen states from Pennsylvania to Oregon and from Minnesota to Texas.[15] In fact, Sprint's ILECs are rural telephone companies, as defined in the Act, in all service territories except Nevada. These factors make it far less likely that an interstate call will originate and terminate within Sprint ILEC territories than within a BOC's territory like BellSouth's.

BellSouth, in contrast, has nearly 20 million access lines[16] in a contiguous nine-state territory that it unquestionably dominates, including almost every metropolitan area and major urban center in its region. Yet while BellSouth pretends that its Petition should be assessed solely by comparing BellSouth to Verizon and SBC, Sprint and other independent ILECs have lived with fundamentally the same requirements for years. The particular "costs and inefficiencies" of the "regulatory paradigm" that BellSouth complains of here have not been nearly so "severe" or "burdensome" as BellSouth claims. Petition at 3. All ILECs live with them, and in the BOCs' case they are undoubtedly necessary to protect the competitive long distance market. If independent ILECs have been subject to similar requirements for years, even though they lack BOC market power, it surely makes no sense that BellSouth should be exempted today, scarcely 36 months after receiving in-region authority to market long distance services at all.

The Commission should also be troubled by the vague character of the Petition, and not merely because the law requires the applicant for waiver to "plead with

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15 Sprint has announced its intention to spin off its ILEC operations in 2006 as a free-standing company, by means of a stock dividend to Sprint shareholders.

16 Wireline Competition Bureau, Industry Analysis & Technology Division, Selected RBOC Local Telephone Data, as of 12/31/04 (posted July 2005). A copy is available at *www.fcc.gov/wcb/iatd/comp.html.*

particularity the facts and circumstances which warrant such action."[17] BellSouth has not been clear in what it seeks waived or why. For example, BellSouth seeks waiver of tariffing requirements, yet it does not say whether it would even file rate schedules, as even independent long distance carriers must do for the public regardless of whether it is "difficult to apply to today's long distance calling services" and "flat-rated" and "bundled any distance" calling plans. Petition at 8. The Petition claims that complying with the Commission's regulations "seriously complicates" its "plans for organizing its local and long distance operations" (id. at 2,3), but it does not disclose what those plans are. It seeks waiver of dominant carrier regulation, but does not explain how it can lack market power in its proposed integrated local and long distance operations when even small independents must utilize separate affiliates. It wants to treat interstate long distance revenue as "regulated" for accounting purposes, despite its being deemed a competitive service, but does not explain why it is in the public interest to allow integration of regulated and non-regulated revenues and costs, or why it is unreasonably burdensome to account for them separately as other carriers must do. That lack of clarity would make any potential exemption from the Commission's rules all the more dangerous to the public interest.

B. BellSouth has not shown that waiver is in the public interest.

1. Congress and the Commission have recognized that regulatory restraints are appropriate and necessary to protect the public interest when BOCs enter the in-region long distance market.

In adopting sections 271 and 272, Congress made plain that if a BOC is to enter the in-region long distance market, heightened regulatory safeguards are essential, and

[17] Rio Grande Radio Fellowship v. FCC, 406 F.2d 664, 666 (D.C. Cir. 1968).

are not to be merely temporary. Congress fully understood that these cause some inefficiencies. They are nevertheless necessary because of the BOCs' market power in their regions.

Congress explicitly differentiated between BOCs and other ILECs and had obvious and legitimate reasons for doing so. The Act was a response to and a replacement for the AT&T Modification of Final Judgment.[18] As the Supreme Court recognized, the Act's requirements "were intended to eliminate the monopolies enjoyed by the inheritors of AT&T's local franchises."[19] BellSouth and the other BOCs challenged the Act, and section 271 in particular, on Constitutional grounds. Ultimately, they lost those appeals.[20] As the D.C. Circuit explained, "Congress clearly had a rational basis for singling out the BOCs, *i.e.*, the unique nature of their control over their local exchange areas."[21] The Commission likewise has recognized the importance of competitive safeguards to ensure BellSouth competes "on a level playing field."[22] It goes

[18] United States v. American Telephone and Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

[19] Verizon Comms. Inc. v. FCC, 535 U.S. 467, 476 (2002).

[20] See SBC Comms. v. FCC, 154 F.3d 226, 246 (5th Cir. 1998), cert. denied, 525 U.S. 1113 (1999); BellSouth Corp. v. FCC, 162 F.3d 678, 691-92 (D.C. Cir. 1998).

[21] BellSouth, 162 F.3d at 691.

[22] See, e.g., Application by BellSouth Corp., BellSouth Telecomms., Inc., and BellSouth Long Distance, Inc., for Auth'n to Provide In-Region, Inter-LATA Servs. in Fla. and Tenn., 17 FCC Rcd 25828 at ¶ 69 (2002), discussing safeguards under section 272 and citing Application of Ameritech Mich. Purs. to Sec. 271 of the Comms. Act of 1934, as Amended, to Provide In-Region, InterLATA Servs. in Mich., 12 FCC Rcd. 20543 at ¶ 346 (1997); Joint Appl. by BellSouth Corp., BellSouth Telecomms., Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Servs. in Ala., Ky., Miss., N.C., and S.C., 17 FCC Rcd. 17595 at ¶ 69 (2002) (same); Joint Appl. by BellSouth Corp., BellSouth Telecomms., Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Servs. in Ga. and La., 17 FCC Rcd. 9018 at ¶ 69 (2002) (same).

almost without saying that the specific rules for which BellSouth seeks exemption were adopted for the very purpose of protecting consumers and the competitive marketplace.

Under current regulations, BellSouth enjoys nondominant status so long as it complies with section 272 requirements for a separate subsidiary. Accordingly, it has a choice. It can remain nondominant and continue to utilize a separate affiliate, or it can comply with the regulatory requirements applicable to it as a dominant carrier. BellSouth, however, seeks to operate on an integrated basis – the details of which it fails to specify – at the same time that it seeks relief from regulatory requirements that even small independent LECs must meet.

BellSouth assumes that the mere passage of thirty-six months from its last grant of in-region long distance authority is sufficient to render these rules unnecessary for a BOC. When the Commission approved BellSouth's last section 271 application, it recognized that BellSouth's good behavior cannot be presumed. Commissioner Copps noted that the Commission does not always show sufficient "vigilance towards ensuring continued compliance" with nondiscrimination and market-opening requirements after section 271 applications have been granted.[23] The Commission can scarcely expect to meet his call to "do better" in monitoring and enforcing compliance (id.), when BellSouth seeks outright exemption from competitive safeguards that have long been part of the Commission's rules.

See also Application of BellSouth Corp., BellSouth Telecomms., Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Servs. in La., 13 FCC Rcd 20599 at ¶ 206 (1998).

[23] Statement of Commissioner Copps, Application by BellSouth Corp., BellSouth Telecomms., Inc., and BellSouth Long Distance, Inc., for Auth'n to Provide In-Region, Inter-LATA Servs. in Fla. and Tenn., 17 FCC Rcd 26080 (2002).

2. BellSouth plainly has market power.

Today, BellSouth and the other BOCs remain unquestionably dominant in the local exchange and exchange access markets in which they are the ILEC. They retain the incentive and the ability to adversely affect long distance competition.[24] BellSouth has leveraged that market dominance to become, virtually overnight, the largest mass market long distance carrier in its region. It is also rapidly expanding its share of the enterprise market at the expense of competitive long distance carriers.

Like that of all the BOCs, BellSouth's dominance in the local exchange market remains unquestionable. In the local exchange market, CLECs hold just 17.6% of the residential and small business market, and just 18.5% of the total end-user switched access lines.[25] Only a quarter of these CLECs provide service solely through their own facilities. Id. at Table 3. CLECs remain heavily dependent on BellSouth facilities to serve their customers. To make matters worse, the continued financial troubles that CLECs have been facing for the last several years can only heighten concerns about BellSouth's ability to abuse its market dominance.

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[24] However, the same is *not* true of non-BOC ILECs, which because of their much smaller scale and geographically dispersed (and largely rural) local operations are not in the same position as the BOCs to adversely affect interexchange competition. (Indeed, insofar as Sprint is aware, the Commission has never found that a non-BOC ILEC has discriminated in favor of its affiliate at the expense of other unaffiliated carriers.) The fact that section 272 applies only to the Bell Operating Companies reflects Congress' recognition that the BOCs must be subject to more stringent safeguards than are required for other ILECs.

[25] Local Competition: Status as of Dec. 31, 2004, Industry Analysis Div., Common Carrier Bureau (July 8, 2005) at Tables 1, 2. The data also reflects a pronounced decline in mass market CLEC lines between June 30 and December 31, 2004.

In the exchange access market, competitive gains have also been very limited. Competitive interexchange carriers ("IXCs") remain dependent on BellSouth for special access. Despite aggressive efforts to self-supply and to utilize non-BOC suppliers, Sprint's long distance division relies on ILECs for more than 90% of its total special access requirements, and the largest alternative access providers ("AAVs") are affiliates of AT&T and MCI, which SBC and Verizon now seek to acquire. Other competitive carriers are similarly dependent. BellSouth's facilities reach effectively every building within its service territory, while Sprint's review of AAVs shows only a few percent of buildings are reached by alternative access providers, and a many of those reach only a portion of the building.[26]

Moreover, while BellSouth points to other technologies to justify its waiver Petition, those competitors are also heavily dependent on BellSouth for special access. CMRS carriers must rely on BellSouth facilities to connect cell sites and switching centers.[27] VoIP competitors rely heavily on BellSouth facilities, directly or indirectly. Even cable-TV competitors depend on BOC facilities to provide service to their own customers, whether they utilize traditional or IP-based technologies.[28] Furthermore,

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[26] See Comments of Sprint Corporation, Access to Unbundled Network Elements, WC Docket No. 04-313 (filed Oct. 4, 2004); Reply Comments of Sprint Corporation, Access to Unbundled Network Elements, WC Docket No. 04-313 (filed Oct. 19, 2004).

[27] It is worth noting, too, that BellSouth has added incentive to discriminate in favor of its wireless affiliate. Cingular, which BellSouth owns together with SBC Communications, "now represents more than 40 percent of BellSouth's revenue." BellSouth Mid-Year Report 2005 at 3.

[28] See, e.g., Comments of Cox Communications, Inc., Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, WC Docket No. 04-223 (filed Aug. 24, 2004).

VoIP and cable-TV based competition together account for scarcely 4% of households,[29] and the vast majority of wireless customers still maintain a wireline phone.[30]

BellSouth also has a record of abusing its market power. As a group, the BOCs have shown a pattern of resisting competition in violation of the Act's requirements.[31] Although BellSouth's record has been better than the two largest BOCs, BellSouth has repeatedly faced state and federal penalties for unlawful price discrimination, repeated failure to meet performance standards, and anticompetitive conduct against interconnecting carriers. Just months after receiving its last section 271 approvals, BellSouth entered a consent decree to resolve two separate Commission investigations into the marketing of long distance service prior to receiving section 271 authorization and violations of sections 271(c) and 272(b), (c), and (e) of the Act with regard to non-discrimination and separate affiliate requirements.[32]

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[29] See, e.g., Petition at 15 & nn.41-42. The Commission has found that "[a]lthough we recognize that limited intermodal competition exists due to VoIP offerings, we do not believe that it makes sense at this time to view VoIP as a substitute for wireline telephony." Unbundled Access to Network Elements, Order on Remand, 20 FCC Rcd 2533 (2005) (Triennial Review Remand Order") at ¶ 38 n.114.

[30] Although the percentage is certainly rising, only a relatively few local telecommunications customers have completely substituted wireless for wireline service. See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) ("Triennial Review Order") at ¶ 53, upheld in part and vacated and remanded in part, United States Telecom Ass'n v. FCC, 359 F.3d 554 (D.C. Cir. 2004) ("USTA II"), cert. denied sub nom. National Ass'n of Reg'y Util. Comm'rs. v. United States Telecom Ass'n, 125 S. Ct. 313 (2004) (noting only three to five percent of wireline customers have gone wholly wireless); USTA II, 359 F.3d at 575.

[31] Together, they have been assessed fines, penalties, and compelled refunds of well over $2.1 billion for market misconduct and violations of statutory obligations, merger conditions, and conditions of section 271 approvals.

[32] BellSouth Corp., Consent Decree, 18 FCC Rcd 15137, adopted by Order, 18 FCC Rcd 15135 (2003).

That consent decree included not merely a compliance program and a $1.4 million payment to the U.S. Treasury, but also the extension of separate affiliate requirements (including biennial audit) in all nine BellSouth states at least until such time as the last state's restrictions have been removed. Remarkably, even while referencing the Consent Decree (Petition at 2 n.4), the Petition fails to acknowledge that it was imposed – and was necessary – precisely because of BellSouth's violations of these fundamental market protections, and at a time when it should have been most sensitive to the need for compliance.

Competitive carriers have seen the impact. They have seen loss of market share to BellSouth and other BOCs, as those carriers exploit their dominance of the local exchange and exchange access markets to win long distance and enterprise customers. At the same time, after the Commission granted the BOCs special access pricing flexibility, ostensibly to allow them to lower prices to meet competition, their and BellSouth's special access rates have actually risen, not fallen. It is little surprise, then, that in relevant rulemaking proceedings, competitors, state commissions, and consumer advocates have all recognized the need for continued structural and nonstructural safeguards to protect the long distance market from BellSouth's market power.[33]

Were the Petition granted, BellSouth could discriminate in favor of its long distance operations, and in competition for bundles of local and long distance services. It would be free to cross-subsidize its long distance and enterprise market entry using its local and exchange access services. It could misallocate costs and cross-subsidize long distance, bundled, and enterprise services. It could create price squeezes to suppress

[33] See, e.g., comments submitted in Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112 (filed July 28, 2003).

competition. It could report costs and revenues in a manner inconsistent and incompatible with all other ILECs (even the other BOCs), which would make much of BellSouth's cost and revenue accounting useless to the Commission, state authorities, the industry, and other interested parties.[34]

Exempting BellSouth from these rules would seriously undermine deterrence of competitive abuses, because these acts would be rendered virtually undetectable. It is one thing to have a rule prohibiting cross-subsidization, but quite another to be able to detect and counter it. Accounting, in particular, can veil a great many sins.[35] BellSouth has undergone only one section 272(d) audit,[36] and its auditor's report showed that BellSouth had discriminated in favor of its long distance affiliate, improperly steered business to its affiliate, and often violated transactional safeguards, including the obligation of its ILEC and long distance operations to "operate independently."[37] AT&T's expert, in critiquing the auditor's report, also recognized that the review was improperly limited and "failed to pursue other possible violations of section 272."[38] Beyond inviting comments on the audit report, the Commission itself took no action on the report.

[34] Accounting needs to be consistent among ILECs. This dictates against granting a waiver to one carrier.

[35] See, e.g., United States v. GTE Corp., 603 F. Supp. 730, 738 (D.D.C. 1984) (noting that "the more indirect, subtle vehicles for cross-subsidization … are ordinarily the most difficult to detect").

[36] See Report of Independent Accountants on Applying Agreed-Upon Procedures, EB Docket No. 03-197 (filed Dec. 23, 2003).

[37] 47 U.S.C. § 272(b)(1).

[38] Comments of AT&T Corp. on BellSouth's Section 272 Compliance Biennial Audit Report, EB Docket No. 03-197 (filed Mar. 9, 2004) at 16 and Att. 1.

BellSouth has not shown good cause for waiver, and cannot. These rules are essential safeguards for the competitive market and consumers. Because of its continued BOC market power, exempting BellSouth from these rules would be contrary to the public interest.

3. BellSouth does not need regulatory exemptions to compete.

BellSouth has leveraged its demonstrated power in the exchange access and local exchange services market to rapidly dominate the in-region long distance market. The Petition claims that it has "less than 6%" of the "national long distance market" (Petition at 25), but that is terribly misleading. Indeed, realistically one can scarcely view BellSouth Long Distance as "non-dominant" in long distance in-region.[39] Unlike a national competitive carrier like Sprint, BellSouth has overwhelmingly concentrated its long distance market entry in its ILEC territory. BellSouth claims it is simply "a regional telephone company" (id. at 25), but it obviously remains the dominant carrier within that vast region.

In fact, BellSouth's latest investor report brags that it has reached "a 53 percent penetration of our mass market customer base."[40] It has reached this milestone less than three years after receiving full in-region long distance authority under section 271, and without any meaningful investment in long distance facilities. Competitive long distance carriers took years, and substantial investment, to reach a similar *collective* market share.

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[39] BellSouth acknowledges that the Commission has never seen fit to "accord[] non-dominant status to a BOC for the provision of long distance service outside of a section 272 affiliate." Petition at 8.

[40] BellSouth Mid-Year Report 2005 at 3. A copy is available on its website at *http://www.bellsouth.com/investor/pdf/midyear05.pdf.*

BellSouth's long distance market share and revenues are also rising markedly, even as competitive carriers have seen successive years of long distance revenue declines and overall industry revenues continue to fall. In the last six months alone, BellSouth "added 765,000 net new long distance customers," and BellSouth's total of 6.8 million long distance customers is up 70 percent in the last eighteen months alone. Id. In contrast, BellSouth's competitors have been struggling. Over the last few years, scores of CLECs and IXCs have been forced into bankruptcy.

At the same time, BellSouth enjoys significant cost advantages unavailable to non-BOC interLATA carriers. Shared sales and marketing alone allow the BOCs to enjoy customer acquisition costs that are perhaps 20% to 30% lower than non-BOC competitors.[41] And of course BellSouth enjoys economies of scale, especially for bundled services, that no competitor can match in its territory.

BellSouth's suggestion that its "regulated revenue" makes it appear more like a "mid-sized carrier" (Petition at 24) is similarly misleading. Yes, BellSouth has half the access lines of SBC or Verizon. But it has more than $20 billion in total annual revenue and nearly three times as many lines as the largest independent ILEC. And, again, unlike Sprint's ILEC operations, BellSouth's lines are concentrated in a large, contiguous territory containing numerous urban areas. Regardless, BellSouth's designation as a BOC is statutory,[42] not a creation of the Commission's 1997 LEC

[41] See Reply Comments of WorldCom, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112 (filed Aug. 26, 2002) (quoting a Verizon officer in USA Today).

[42] 47 U.S.C. § 153(4) (defining "Bell Operating Company" and specifically including Southern Bell Telephone and Telegraph Company and its successors and assigns). See also 47 C.F.R. § 53.3 (implementing this statutory requirement).

Classification Order.[43] It is not a function of lines or revenue, but a reflection of in-region market power that Congress recognized BellSouth enjoyed as the heir to the AT&T monopoly. BellSouth's market power as a BOC has not been changed by the mergers of some of the original seven BOCs into today's current set of four. Cf. Petition at 23. BellSouth's concerns about the size of SBC and Verizon are matters that should be addressed in their respective IXC merger proceedings.

By any measure, BellSouth's entry into the long distance market has been very fast and remarkably successful. Clearly, the "burdensome regulatory requirements" and "added costs and inefficiencies" currently experienced by BellSouth have not been "so severe" (Petition at 3 & n.5) that waiver of existing regulations is justified. BellSouth has failed its burden to show good cause for a waiver.

III. The Commission Should Address Long Distance Regulatory Issues in Already-Pending Rulemakings and not Make Policy in Piecemeal Fashion.

The Petition (at 2) acknowledges that the Commission already has pending a rulemaking proceeding to assess whether changes are warranted in regulations governing BOC provision of in-region long distance services. In May 2003, the Commission launched an inquiry to consider regulations that should apply to the BOCs when offering long distance service in their home territories on a structurally integrated basis. The Commission solicited and received comments from BOCs, competitive carriers, state commissions, and others on "the continued need for dominant carrier regulation of BOCs' in-region, interstate and international interexchange telecommunications services

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[43] Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Second Report and Order, 12 FCC Rcd 15756 (1997) ("LEC Classification Order").

after sunset of the Commission's section 272 structural and related requirements in a state," including whether and on what conditions BOCs may in the future "provide in-region interexchange services outside of a separate affiliate."[44]

The Commission has not yet adopted any rules in that proceeding. The questions raised in that notice of proposed rulemaking are important and deserve to be answered, including whether the regulations governing independents should be updated. Instead, BellSouth is trying to shortcut that rulemaking by seeking a waiver that would allow it to operate on an integrated basis when even the smallest ILEC cannot. Entertaining BellSouth's Petition, while that rulemaking is outstanding, is definitely premature. The Commission should not (and properly cannot) prejudice the outcome of that proceeding by entertaining waiver requests on a piecemeal basis. Indeed, other issues directly and indirectly related to BellSouth's Petition are also the subject of outstanding proceedings. These include pending rulemakings on special access performance standards and enforcement,[45] special access rates for price cap LECs,[46] and performance measures for UNEs and interconnection.[47]

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[44] Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate requirements of Section 64.1903 of the Commission's Rules, WC Docket No. 02-112, CC Docket No. 00-175, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 at ¶¶ 1, 2 (2003).

[45] Performance Measurements and Standards for Interstate Special Access Services, CC Docket Nos. 01-321, et al., Notice of Proposed Rulemaking, 16 FCC Rcd 20896 (2001).

[46] Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005).

[47] Performance Measurements and Standards for Unbundled Network Elements and Interconnection, CC Docket No. 01-318, Notice of Proposed Rulemaking (16 FCC Rcd 20641 (2001).

The Commission should address these important issues on a full record and through the proper rulemaking channels. BellSouth does not explain why its Petition should be addressed now, outside of the pending rulemaking proceeding. Its self-styled "Hobson's choice" simply leaves BellSouth and its long distance affiliate subject to "burdensome regulatory requirements" similar to those that Sprint and other non-BOC ILECs have long endured. Petition at 3. If changes in regulation are warranted – something the Petition alone fails to establish – the Commission can address those in a proper rulemaking order, addressed to all affected carriers. Given BellSouth's dramatic success in entering the in-region long distance market, it can surely await such Commission action, just like other affected parties. In the meantime, Sprint believes the public interest is clearly better served by denying the waiver and leaving these BOC safeguards in place.

IV. Conclusion

The Petition's claims and assumptions are faulty. It fails to meet the standards for waiver, and it fails to show that such extraordinary exemptions from market-protecting regulations are warranted or in the public interest. Rather than entertain a waiver request and make policy on a piecemeal basis, the Commission should deny BellSouth's extraordinary waiver request and instead complete the on-point rulemaking proceedings that are already pending.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

By ______________________

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October 18, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of Sprint Nextel Corporation's Opposition to Petition for Waiver in WC Docket No. 05-277 was delivered by electronic mail or First Class, postage prepaid, U.S. Mail on this 18the day of October, 2005 to the parties listed below.

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